SUPREME COURT OF THE UNITED STATES.

No. 182.

ACHAS P. DUTTON AND CYRUS HINES, PLAINTIFFS IN ERROR,

vs.

H. NORTON STRONG AND WILLIAM H. GOODNOW.

IN ERROR TO THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF WISCONSIN.

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GIDEON, Print.

UNITED STATES OF AMERICA,
District of Wisconsin, ss.

Be it remembered, that heretofore, to wit, on the seventh day of March, in the year of our Lord one thousand eight hundred and fifty-six came H. Norton Strong and William H. Goodnow, by their attorney, John W. Cary, and filed their præcipe for a summons against the defendants, Achas P. Dutton, Cyrus Hines, and Elisha Raymond, as follows:

Præcipe for Summons.

District Court of the United States for the district of Wisconsin.

H. NORTON STRONG and WILLIAM H. GOODNOW
vs.
ACHAS P. DUTTON, CYRUS HINES, and ELISHA RAYMOND.

B. K. MILLER, *Clerk of Court.*

SIR: Please issue a summons in a plea of trespass on the case in the above entitled cause for five thousand dollars' damages, returnable in April next. Plaintiffs are citizens of Michigan.

Yours, &c. JOHN W. CARY,
Attorney for Plaintiffs.

Dated March 6th, 1856.

Whereupon a summons issued as follows:

THE UNITED STATES OF AMERICA,
District of Wisconsin, ss.

The President of the United States of America, to the marshal of the district of Wisconsin, greeting:

You are hereby commanded to summon Achas P. Dutton, Cyrus Hines, and Elisha Raymond to appear before the district court of the United States of America, for the district of Wisconsin aforesaid, at Milwaukie, on the first Monday of April next ensuing, then and there to answer unto H. Norton Strong and William H. Goodnow in a plea of trespass on the case, to their damage five thousand dollars, which shall then and there be made to appear; and of this writ make due return.

[SEAL.]

Witness the Hon. Andrew G. Miller, judge of the said district court of the United States, at the city of Milwaukie, in the said district of Wisconsin, this seventh day of March, in the year of our Lord one thousand eight hundred and fifty-six, and of the independence of the United States the eightieth.

B. K. MILLER, *Clerk.*
JOHN W. CARY, *Attorney.*

And afterwards, on or before the return day of said writ, came the marshal and returned said writ, with his return endorsed thereon, as follows:

Return to Summons.

Served personally, by showing the original and delivering a copy of the within summons to the within named A. P. Dutton and E. Raymond each, March 10, 1856. The within Cyrus Hines not found.

S. V. R. ABLEMAN, *U. S. Marshal.*
By J. KEARNEY, *Deputy.*

Fees $5 90.

And afterwards, to wit, on the seventh day of May, in the year of our Lord one thousand eight hundred and fifty-six, came the said plaintiffs, by their said attorney, and filed their præcipe for an alias summons, as follows:

U. S. District Court for the district of Wisconsin.

H. NORTON STRONG and WILLIAM H. GOODNOW
vs.
ACHAS P. DUTTON, ELISHA RAYMOND, and CYRUS HINES.

Please issue an alias summons for the defendant Cyrus Hines, and send to this county, returnable 1st Monday June.

Yours, &c.

JOHN W. CARY.

Dated May 5th, 1856.

Whereupon an alias summons issued as follows:

THE UNITED STATES OF AMERICA,
District of Wisconsin, ss.

The President of the United States of America to the marshal of the district of Wisconsin, greeting:

You are hereby commanded, as heretofore commanded, to summon Cyrus Hines to appear before the district court of the United States of America, for the district of Wisconsin aforesaid, at Milwaukie, on the first Monday of June ensuing, then and there to answer unto H. Norton Strong and William H. Goodnow, in a plea of trespass on the case, to their damage five thousand dollars, which shall then and there be made to appear; and of this writ make due return.

[SEAL.]

Witness the Hon. Andrew G. Miller, judge of the said district court of the United States, at the city of Milwaukie, in the said district of Wisconsin, this 7th day of May, in the year of our Lord

one thousand eight hundred and fifty-six, and of the independence of the United States the eightieth.

B. K. MILLER, *Clerk.*
JOHN W. CARY, *Attorney.*

And afterwards, on or before the return day of said alias summons, came the said marshal, and returned said writ with his return endorsed thereon, as follows:

Return to alias Summons.

Personally served the within summons on the within named Cyrus Hines, by showing him the original, and delivering to him a true copy of the same, this 10th day of May, 1856.

S. V. R. ABLEMAN, *Marshal.*
By J. KEARNEY, *Deputy.*

Fine $3 70.

And afterwards, to wit, on the seventh day of July, in the year of our Lord one thousand eight hundred and fifty-six, came the said plaintiffs, by their said attorneys, and filed their declaration, as follows:

Declaration.

United States District Court for the district of Wisconsin.—Of the first Monday of June A. D. 1856.

DISTRICT OF WISCONSIN, *ss.*

H. Norton Strong and William H. Goodnow, of the city of Detroit, and State of Michigan, and citizens of the State of Michigan, by John W. Cary, their attorney, complain of Achas P. Dutton, Elisha Raymond, and Cyrus Hinds, of the city of Racine, in the State of Wisconsin, and citizens of the State of Wisconsin, being in custody, &c.:

For that whereas the said plaintiffs heretofore, to wit, on the 7th day of May, 1855, at Racine, in the said district and State of Wisconsin, were the owners of and lawfully possessed of a certain vessel called the Homer Ramsdell, then lawfully being in and used in navigating the waters of Lake Michigan, at Racine aforesaid.

And whereas the said vessel then and there lay moored and fastened, at a certain dock and *and* common mooring and fastening place for vessels on said lake, commonly called a bridge pier, the said defendants then and there wrongfully cut and severed the fastenings by which said vessel was moored and fastened to said dock and pier, and cast said vessel loose therefrom, and thereby then and there the said vessel was driven by the force of the wind and waves against a certain other dock and pier, then and there being in said lake, and on to the shore of said lake, and by reason thereof the said vessel was then and there greatly broke, damaged, injured, and sunk.

And also by reason of the premises, the said plaintiffs have been forced and obliged to pay, lay out, and expend, and have necessarily paid, laid out and expended, a large sum of money, to wit, the sum of two thousand dollars, in and about the raising of the said vessel, and the repairing the said damage so done to the said vessel as aforesaid.

And also by means of the premises, the said plaintiffs lost and were deprived of the use of the said vessel for a long space of time, to wit, for the space of seventeen days, and thereby lost and were deprived of all the profits and advantages which during that time they might and also otherwise would have derived and acquired from the use of their said vessel, to wit, the sum of two thousand dollars, at the district and State aforesaid.

And whereas, also, the said plaintiffs, before and at the time of the committing of the grievances by the said defendants, as hereinafter next mentioned, were the owners of and lawfully possessed of a certain other vessel then being in and used in navigating the waters of Lake Michigan of great value, to wit, of the value of ten thousand dollars, to wit, at Racine, in the said district of Wisconsin.

And whereas the said vessel had then and there, by stress of weather and the perils of navigation, been driven alongside of a certain dock and common mooring place at Racine aforesaid, commonly called a bridge pier, to which the said vessel was then and there moored and fastened by cables and lines; and the said vessel being so moored and fastened, the said defendants, to wit, on the 7th day of May, 1855, at Racine aforesaid, wrongfully cut and severed the said moorings and fastenings by which said vessel was moored and fastened to said dock and pier, and cast said vessel loose therefrom; and thereby, then and there, the said vessel was driven by the force of the wind and waves against a certain other dock and pier, *and* then and there being in said lake, and on to the shore of the said lake, and by reason thereof the said vessel was then and there greatly broke, damaged, injured and sunk.

And also by reason of the premises, the said plaintiffs have been forced and obliged to pay, lay out, and expend, and have necessarily paid, laid out and expended, a large sum of money, to wit, the sum of two thousand dollars, in and about the raising of the said vessel, and the repairing the said damage so done to the said vessel as aforesaid.

And also by means of the premises, the said plaintiffs lost and were deprived of the use of the said vessel for a long space of time, to wit, for the space of seventeen days, and thereby lost and were deprived of all the profits and advantages which during that time they might and also otherwise would have derived and acquired from the use of their said vessel, to wit, the sum of two thousand dollars, at the district and State of Wisconsin, aforesaid.

And whereas, also, the said plaintiffs, before and at the time of the committing of the grievance by the said defendants as hereinafter next mentioned, were lawfully possessed of a certain other vessel of great value, to wit, of the value of ten thousand dollars, then lawfully being in the waters of Lake Michigan, at Racine, in the district of Wisconsin; and whereas, the said vessel then and there lay moored and fastened to a certain dock and common mooring and fastening place for vessels on said lake, commonly called a bridge pier, and the said vessel being then and there wholly unable to remove from her said mooring place, on account of the violence of the winds and waves then and there blowing and raging, the said defendants, to wit, on the seventh day of May, 1855, wrongfully cut and severed the lines and fastenings by which said vessel was moored and fastened to said dock and pier, and cast said vessel loose therefrom, and thereby then and there the said vessel was driven by the force of the wind and waves against a certain other dock and pier, then and there being in said lake, and on the shore of said lake, and by reason thereof the said vessel was then and there greatly broke, damaged, injured and sunk.

And also by reason of the premises, the said plaintiffs have been forced and obliged to pay, lay out and expend, and have necessarily paid, laid out and expended, a large sum of money, to wit, the sum of two thousand dollars, in and about the raising of said vessel, and the repairing the said damage so done to the said vessel as aforesaid.

And also by means of the premises, the said plaintiffs lost and were deprived of the use of the said vessel for a long space of time, to wit, for the space of seventeen days, and thereby lost and were deprived of all the profits and advantages which during that time they might and also otherwise would have derived and acquired from the use of their said vessel, to wit, the sum of two thousand dollars, at the district and State of Wisconsin aforesaid.

And whereas, also, the said plaintiffs, on the 7th day of May, A. D. 1855, at Racine, in the district of Wisconsin, were possessed of a certain other vessel of great value, to wit, of the value of ten thousand dollars, then lying and being in the waters of Lake Michigan, which said vessel was lawfully entitled to the free use and navigation of said Lake Michigan, without let or hindrance from any unlawful obstruction whatever.

Yet the said defendants, well knowing the premises, to wit, on the 7th day of May, 1855, at Racine aforesaid, did wrongfully and unlawfully erect and cause to be erected a certain permanent bridge or structure, on the navigable waters of Lake Michigan, whereby the vessel of the said plaintiffs was wholly unable to make the harbor in the said city of Racine, and was wholly unable to put out into said lake, as she otherwise might and would have

done; but in consequence thereof was compelled to remain near the shore of said lake, and was then and there by reason of said obstruction, by the force and violence of the wind and waves, driven on the shore of said lake, and against a certain dock, to wit, at Racine aforesaid, on the 7th day of May, 1855, and by reason thereof the said vessel was then and there greatly broke, damaged, injured and sunk.

And also, by reason of the premises, the said plaintiffs have been forced and obliged to pay, lay out, and expend, and have necessarily paid, laid out, and expended, a large sum of money, to wit, the sum of two thousand dollars, in and about the raising of said vessel, and repairing the said damage so done to the said vessel as aforesaid.

And also by means of the premises, the said plaintiffs lost and were deprived of the use of the said vessel for a long space of time, to wit, for the space of seventeen days, and thereby lost and were deprived of all the profits and advantages which during that time they might and also otherwise would have derived and acquired from the use of their said vessel, to wit, the sum of two thousand dollars, at the district and State aforesaid. To the damage of the said plaintiffs of five thousand dollars.

JOHN W. CARY,
Attorney for Plaintiffs.

And afterwards, at a term of said court, begun and held according to law, on the first Monday of July, A. D. 1856, at the city of Madison, in said district of Wisconsin, on the ninth day of July, 1856, the following proceedings were had, to wit:

Default and Writ of Inquiry.

H. NORTON STRONG and WILLIAM H. GOODNOW vs. ACHAS P. DUTTON, CYRUS HINES, and ELISHA RAYMOND.	At Law.

This day came the plaintiffs by their counsel, and on their motion it is ordered by the court that the default of the defendants be and is hereby entered, for their not appearing and pleading to the plaintiffs' declaration herein filed, and that a writ of inquiry be issued for the assessment of damages.

And afterwards, to wit, on the 9th day of September, A. D. 1856, came the defendants by their attorney, Mr. Ryan, and filed their plea, as follows:

Plea.

In the District Court of the United States for the district of Wisconsin.—Of the first Monday of June, 1856.

H. NORTON STRONG and WILLIAM H. GOODNOW
vs.
ACHAS P. DUTTON, ELISHA RAYMOND, and CYRUS HINES.

And the said Achas P. Dutton, Elisha Raymond, and Cyrus Hines, the said defendants, come in their own proper persons, and defend the force and injury, and say that this court ought not to have or take further cognizance of the action aforesaid, because they say that before the commencement of this action by the said plaintiffs against the said defendants, to wit, on the tenth day of May, in the year 1855, in the circuit court for the State of Wisconsin, for and in the county of Racine, in the said State, the said defendants, Achas P. Dutton and Elisha Raymond and one Seneca Raymond, impleaded the said schooner or vessel, called the Homer Ramsdell, mentioned in the said plaintiffs' declaration, and filed their complaint against the said schooner or vessel, pursuant to the statute of the said State of Wisconsin in that case made and provided, and in and by the said complaint complained against the said schooner or vessel, amongst other things, that they the said complainants therein, on the seventh day of May, in the year 1855, had been and then were the owners and occupants of a warehouse and bridge pier at the city of Racine, in the said county of Racine, and that the said bridge pier was owned and occupied by them, the said complainants therein, for the purpose of shipping and receiving therefrom goods, wares and merchandise; and that said bridge pier was also used by them, the said complainants therein, for the purpose of doing a general forwarding and commission business; and that on the morning of the day last aforesaid, the master of the said schooner or vessel wrongfully, without leave or license of them, the said complainants therein, and without having any business to transact or do on the said bridge pier, did run the said schooner or vessel up to the said bridge pier, and then and there made the said schooner or vessel fast to the said bridge pier, by means of ropes and lines, hawsers and cables; and that at the time and place last aforesaid, the said master of the said schooner or vessel might and could with safety have run the said schooner or vessel out into the lake, off from said bridge pier, without doing or causing any injury or damage thereto, but to do the same, the said master wholly neglected and refused; and that the said master was afterwards and on the day last aforesaid requested by them, the said complainants therein and their servants, to remove said

schooner or vessel from said bridge pier, and to run her, the said schooner or vessel, out and away from said bridge pier, and the said master was then and there further requested to unloose and remove from said bridge pier the said ropes, lines, cables and hawsers so made fast to said bridge pier as therein aforesaid; but to do the same the said master wholly neglected and refused, and did from thenceforward, until about the hour of two o'clock in the afternoon of the same day last aforesaid, remain and keep said schooner or vessel fast to said bridge pier as aforesaid; and that after the said schooner was made fast to said bridge pier, as therein aforesaid, and after the said master had had sufficient and reasonable time to run said schooner or vessel off from and away from said bridge pier, the sea and wind increased, the said schooner by force of the wind and sea, by reason of the negligence and carelessness of the said master, by means of the ropes, lines, cables and hawsers so used as therein aforesaid, did pull down, break, and carry away a large portion of the piles, timbers and planks of said bridge pier, to wit, two hundred feet in length from east to west, and did rock, jar, and pull apart other portions of said bridge pier, and did then and there do other injury to said bridge pier, whereby they, the said complainants therein, had wholly lost the use of the said bridge pier, as by the said complaint and the record and proceedings thereof remaining in the said circuit court, to wit, at the city of Racine, in the said county of Racine, and whereof the said defendants annex a certified copy hereto, as and for a part of this their plea, will more fully appear.

And the said defendants further say, that the suit so brought and prosecuted against the said schooner or vessel by the said complaint is still depending and undetermined in the said circuit court, to wit, at the place last aforesaid.

And the said defendants further say, that the said schooner, called the Homer Ramsdell, mentioned in the said complaint, is the same identical vessel mentioned in the several counts of the said plaintiffs' declaration, and in each of them, and not other or different, to wit, at the place last aforesaid.

And the said defendants further say, that the said alleged trespasses and injuries averred in the said plaintiffs' declaration to have been committed by the said defendants, and the wrongs and injuries alleged in the said complaint to have been committed by the said schooner or vessel, are parcels of the same identical occurrence and transaction, and not of other or different occurrences and transactions; and that the bridge pier mentioned in the said complaint is the same identical dock and common mooring mentioned in the first, second, and third counts of the said plaintiffs' declaration, and the same identical permanent bridge or structure mentioned in the fourth count of the said plaintiffs' declaration, and not other or different, to wit, at the place aforesaid; and that

the said defendants, Achas P. Dutton and Elisha Raymond, are the same identical persons mentioned in the said complaint, and not other or different; and that the said defendant, Cyrus Hines, at the time of the committing of the said alleged trespasses in the said plaintiffs' declaration mentioned, was, and acted as, the servant and under the authority of the said defendants, Achas P. Dutton and Elisha Raymond, and the said Seneca Raymond, mentioned in the said complaint, to wit, at the place aforesaid.

And the said defendants further say, that at the time of the occurring of the wrongs and grievances in the said complaint mentioned, and of the filing of the said complaint, the said schooner or vessel, called the Homer Ramsdell, was a vessel navigating the waters of the State of Wisconsin, and then was navigating the waters of the said State within the said county of Racine, and within the jurisdiction of the said circuit court, to wit, at the place aforesaid.

And the said defendants further say, that the said circuit court, at the several times of the filing of the said complaint, and of the commencement of this suit had, and ever since has had and now has, jurisdiction and full power and authority, under and by the laws of the said State of Wisconsin, of the said complaint and of the matters therein alleged, and of this suit, and the matters alleged in the said plaintiffs' declaration, to wit, at the place aforesaid.

And this the said defendants are ready to verify. Wherefore, since the said circuit court of the State of Wisconsin, for the said county of Racine, first entertained and exercised jurisdiction over the subject-matter of the said plaintiffs' declaration, under the laws of the said State, the said defendants pray judgment if the said district court of the United States now here will or ought to have further cognizance of the action aforesaid.

ACHAS P. DUTTON,
ELISHA RAYMOND,
CYRUS HINDS,
By E. G. RYAN, *his Att'y.*

E. G. RYAN,
Defendants' Attorney.

DISTRICT OF WISCONSIN, *ss.*

Achas P. Dutton and Elisha Raymond, two of the defendants, being duly sworn, severally say that the above plea is true in substance and matter of fact.

ACHAS P. DUTTON,
ELISHA RAYMOND.

Subscribed and sworn before me, this 8th day of September, 1856.

W. E. WORDING,
U. S. Court Commissioner.

I certify that in my opinion the above plea is well founded.

E. G. RYAN.

And there is a record from Racine circuit court annexed to said plea, as follows:

STATE OF WISCONSIN,
Racine County, ss.

Achas P. Dutton, Elisha Raymond, and Seneca Raymond make complaint against the schooner Homer Ramsdell, a vessel navigating the waters of the State of Wisconsin, and now being at the city of Racine, in the county of Racine, in said State, whereof one James C. Robinson is now master—

For that the said James C. Robinson was master of said schooner Homer Ramsdell on the 7th day of May, 1855; and these complainants further set forth, that at the time and place last aforesaid they were and still are the owners and occupants of a warehouse and bridge-pier; that said bridge pier is owned and occupied by these complainants for the purpose of shipping and receiving therefrom and thereon goods, wares, and merchandise; and that said bridge pier is also used by these complainants for the purpose of doing a general forwarding and commission business.

And these complainants further set forth, that on the morning of the day last aforesaid the said master of the said schooner "Homer Ramsdell" wrongfully, without the leave or license of the said complainants, and without having any business to transact or do on said bridge pier, did run said schooner "Homer Ramsdell" up to said bridge pier, and then and there made said schooner fast to said bridge pier by means of ropes and lines, hawsers and cables.

And these complainants further set forth, that at the time and place last aforesaid that the said master of the said schooner might and could with safety have run said schooner out into the lake, off from said bridge pier, without doing or causing any injury or damage thereto; but to do the same the said master wholly neglected and refused.

And these complainants further set forth, that the said master was afterwards, and on the day last aforesaid, requested by these complainants and their servants to remove said schooner from said bridge pier, and to run her, the said schooner, out and away from said bridge pier; and the said master was then and there further requested to unloose and remove from said bridge pier the said ropes, lines, cables, and hawsers so made fast to said bridge pier

as aforesaid; but to do the same the said master wholly neglected and refused, and did from thenceforward, until about the hour of two o'clock in the afternoon of the same day last aforesaid, remain and keep said schooner fast to said bridge pier, as aforesaid.

And these complainants further set forth, that after the said schooner was made fast to said bridge pier as aforesaid, and after the said master had had sufficient and reasonable time to run said schooner off from and away from said bridge pier, the sea and wind increased, the said schooner, by force of the wind and sea, by reason of the negligence and carelessness of the said master, by means of the said lines, ropes, cables, and hawsers so used as aforesaid, to make said schooner fast to said bridge pier as aforesaid, did pull down, break, and carry away a large portion of the piles, timbers, and planks of said bridge pier, to wit, two hundred feet in length from east to west, and did rock, jar, and pull apart other portions of said bridge pier, and did then and there do other injuries to said bridge pier, whereby these complainants have wholly lost the use of said bridge pier.

And these complainants further set forth, that the said schooner "Homer Ramsdell" did at the time and place aforesaid, and in the manner aforesaid, injure and damage the said bridge pier of the said complainants to the amount of five hundred dollars.

And these complainants further set forth, by reason of the injury and damage to the said bridge pier, they have sustained a great loss and damage in their said business, to wit, the sum of one hundred dollars, and so these complainants say, that by means of the premises, they have sustained damage to their business and property to the amount of six hundred dollars; and therefore these complainants make this complaint against the said schooner Homer Ramsdell, in pursuance of the statute in such case made and provided.

ACHAS P. DALTON,
ELISHA RAYMOND,
SENECA RAYMOND.

H. T. SANDERS,
Att'y for Complainants.

RACINE COUNTY, *ss.*

Seneca Raymond, one of the above named complainants, being duly sworn, says he makes this affidavit for himself and on behalf of his co-complainants; that the foregoing complaints subscribed by said complainants is true, according to the best of his knowledge, information and belief.

SENECA RAYMOND.

Subscribed and sworn before me, this 10th day of May, 1855.

ISAIAH G. PARKER,
Dep'y Clerk of Circuit Court, Racine Co.

Warrant.

STATE OF WISCONSIN,
Circuit Court for the County of Racine, ss.

The State of Wisconsin to the Sheriff of the County of Racine, greeting:

You are hereby commanded to seize the schooner Homer Ramsdell, together with her tackle, apparel and furniture, and [L. S.] detain her in your custody until discharged by due course of law, to answer unto Achas P. Dutton, Elisha Raymond and Seneca Raymond, in a plea of trespass on the case for damages to their damage of six hundred dollars; and due return make of this writ, with your doings thereon, to this court, on the third Monday of October next.

Witness Hon. James R. Doolittle, judge of the first judicial circuit of said State of Wisconsin, at Racine, this 11th day of May, A. D. 1855.

LA FAYETTE PARKER, *Clerk.*

Sheriff's Return.

By virtue of the within warrant I have seized the schooner Homer Ramsdell, together with her tackle, apparel and furniture, and have her in my custody this 10th day of May, A. D. 1855; and on the 11th day of May, A. D. 1855, the owner of said schooner Homer Ramsdell gave bond to plaintiff, with sureties approved by clerk of the circuit court of Racine county, as will more fully appear by reference to said bond, which is hereto annexed, and whereupon said schooner was discharged from the custody of the sheriff this 11th day of May, A. D. 1855. All of which is respectfully returned, this 13th day of October, A. D. 1855.

J. O. BARTLETT,
Sheriff of Racine County.

My fees, $5 00.

Bond.

Know all men by these presents, that we, H. Norton Strong, of the city of Detroit, in the State of Michigan, as principal, and William T. Van Pelt and John W. Cary, of the city of Racine, as sureties, are held and firmly bound to Achas P. Dalton, Elisha Raymond and Seneca Raymond, in the penal sum of twelve hundred dollars, to be paid to the said Achas P. Dalton, Elisha Raymond and Seneca Raymond, their heirs, executors and administrators, jointly and severally, firmly by these presents.

Sealed with our seals. Dated the eleventh day of May, A. D. 1855.

Whereas the above named obligees have commenced a suit against the schooner Homer Ramsdell, now lying in the port of

Racine, for the sum of six hundred dollars, of which said schooner H. Norton Strong is owner: now therefore, if the said H. Norton Strong shall pay and satisfy the amount which shall be adjudged to be owing and due to the said obligees in the determination of said suit, together with all costs accruing in the prosecution of said suit, which shall be adjudged against said schooner, then and in that case this obligation to be void; otherwise of force and virtue.

H. N. STRONG, [SEAL.]
W. T. VAN PELT, [SEAL.]
JOHN W. CARY, [SEAL.]

In presence of—
LEWIS W. EVANS.

I hereby approve of the within bond, and the sufficiency of the sureties therein.

LA FAYETTE PARKER,
Clerk Circuit Court for Racine County.

Racine, May 11th, 1855.

Plea.

Racine Circuit Court.

THE SCHOONER HOMER RAMSDELL ads. ACHAS P. DALTON, ELISHA RAYMOND, and SENECA RAYMOND.

Schooner Homer Ramsdell, by John W. Cary, its attorney, comes and defends the wrong and injury, when, &c., and says that it is not guilty of the said supposed grievances above laid to his charge, in manner and form as the said plaintiffs hath above thereof complained against the said defendant.

And of this defendant puts itself upon the country; and the said plaintiffs doth the like, &c.

JOHN W. CARY,
Att'y for Def'ts.

Docket Entries.

May 10th, 1855. Filed plaintiffs' complaint, and issued warrants.

October 15, 1855. Warrant returned, endorsed: By virtue of the within warrant, I have seized the schooner Homer Ramsdell, together with her tackle, apparel and furniture, and have her in my custody, this 10th day May, 1855; and on the 11th day of May, 1855, the owner of said schooner Homer Ramsdell gave bond to plaintiffs, with sureties approved by the clerk of the circuit court for Racine county, as will more fully appear by reference to said bond, which hereto annexed, and whereupon said schooner was discharged from the custody of the sheriff this 11th day of May,

A. D. 1855. All of which is respectfully returned, this 15th day of October, 1855.

J. O. BARTLETT, *Sheriff.*

March 1st, 1856. Plea of defendant filed.

STATE OF WISCONSIN,
Racine County, ss.

I, La Fayette Parker, clerk of the circuit court for Racine county, do hereby certify that the foregoing is a true transcript of all the papers and docket entries remaining on file and of record in my office in the foregoing entitled cause, and the whole of the same; and that the said cause is still pending.

In testimony whereof I have hereunto subscribed my name and affixed the seal of said court, at Racine, in said county, this 14th day of August, A. D. 1856. [SEAL.]

LA FAYETTE PARKER, *Clerk.*

And afterwards, to wit, on the thirtieth day of September, A. D. 1856, came the said plaintiffs, by their said attorney, and filed their demurrer, as follows:

Demurrer.

In the District Court of the United States for the district of Wisconsin.

H. NORTON STRONG and WILLIAM H. GOODNOW
vs.
ACHAS P. DALTON, ELISHA RAYMOND, and CYRUS HINDS.

And the said plaintiffs say that the plea of the *said* defendants, and the matters therein contained, in manner and form as the same are above pleaded, are not sufficient in law to quash the said action.

And that they, the said plaintiffs, are not bound by the law of the land to answer the same. And this they are ready to verify.

Wherefore, for want of a sufficient plea in this behalf, the said plaintiffs pray judgment, and that the said defendants may answer further to the said declaration, &c.

And the said plaintiffs state and show to the court here the following causes of demurrer to the said plea, that is to say:

First. The cause of action set forth in the declaration in this cause is entirely separate and distinct from and independent of the cause of action stated in said plea.

Second. A recovery by the complainants in the action specified in said plea would not bar or preclude the plaintiffs from their right to recover in this case.

Third. Because the said circuit court of Racine county does not

now, and has not at any time, entertained and exercised jurisdiction over the subject-matter of the said declaration in this cause.

Fourth. Because said plea is no answer to the declaration filed in this cause.

JOHN W. CARY,
Plaintiffs' Attorney.

I certify, that in my opinion the above demurrer is well founded.

JOHN W. CARY.

The defendants join in demurrer.

E. G. RYAN,
Def'ts Att'y.

And afterwards, at a term of said court, begun and held, according to law, on the second Monday of November, A. D. 1856, and on the twenty-first day of November, A. D. 1856, the following proceedings were had, to wit:

Demurrer Overruled—Rule to Plead.

H. NORTON STRONG and WILLIAM H. GOODNOW
vs.
ACHAS P. DUTTON, CYRUS HINES, and ELISHA RAYMOND. } At Law.

This day the demurrer of the plaintiffs to the defendants' plea in abatement came on to be heard, and was argued by the counsel of the parties. On consideration whereof, it is ordered by the court that the said demurrer be and hereby is sustained, and that the defendants answer over instanter, or their default will be entered.

And afterwards, to wit, on the fifth day of January, A. D. 1858, came the said defendants, by their said attorney, and filed their plea, as follows:

Plea.

In the District Court of the United States for the district of Wisconsin.

H. NORTON STRONG and WILLIAM H. GOODNOW
vs.
ACHAS P. DUTTON, ELISHA RAYMOND, and CYRUS HINDS.

And now come the said defendants, by E. G. Ryan, their attorney, and defend the force and injury, when, &c., and say that they are not guilty of the said supposed trespasses above laid to their charge, or any of them or any part thereof, as the plaintiffs have above declared against them. And of this they put themselves upon the country, &c.

E. G. RYAN, *Att'y.*

And afterwards, to wit, at a special term of said court, begun and held according to law, on the first Monday of September, A. D. 1857, and on the fifteenth day of September, A. D. 1857, the following proceedings were had, to wit:

Trial.

H. NORTON STRONG and WILLIAM H. GOODNOW
vs.
ACHAS P. DUTTON, CYRUS HINES, and ELISHA RAYMOND. } At Law.

This day the issue herein came on to be tried, whereupon a jury was called to try the same, who came, to wit: John Everts, Elisha Starr, Joel Wilcox, George W. Clason, John Story, Thomas Keogh, Priam B. Heill, Joseph C. James, William H. Byron, Samuel Chandler, James B. Kellogg, and Edward Button, twelve free, honest, and lawful men of the district, who were severally empannelled and sworn by the court; and the trial not being concluded, the same was adjourned until to-morrow morning.

And on the sixteenth day of September, A. D. 1857, the following proceedings were had, to wit:

Verdict of Not Guilty, as to Elisha Raymond.

H. NORTON STRONG and WILLIAM H. GOODNOW
vs.
ACHAS P. DUTTON, CYRUS HINES, and ELISHA RAYMOND. } At Law.

This day the further trial of the issue herein was resumed; and the evidence on the part of the plaintiffs being concluded, and no testimony appearing against Elisha Raymond, one of these defendants, on motion of the other defendants, by their counsel, (and no objections being made by the plaintiffs,) that the said defendant is a witness on their behalf, under the charge of the said court, the said jurors of the jury do say that the said defendant, Elisha Raymond, is not guilty, as the said plaintiffs have herein declared; and the trial not being concluded, the further trial was adjourned until to-morrow morning.

And afterwards, to wit, on the seventeenth day of September, A. D. 1857, the following proceedings were had, to wit:

Verdict.

H. NORTON STRONG, WILLIAM H. GOODNOW,
vs.
ACHAS P. DUTTON and CYRUS HINES. } At Law.

This day came the parties, by their counsel, and the trial of the issue herein was resumed; and the said jurors of the jury, being charged by the court respectively, do say: That the defendants,

Achas P. Dutton and Cyrus Hines, are guilty in manner and form as the said plaintiffs have herein declared against them, and assess the damages to the said plaintiffs at the sum of two thousand four hundred and fifty-five dollars and seventy-one cents.

And came the defendants, by their counsel, and moved the court for a new trial, for reasons filed as follows:

Motion for New Trial.

U. S. District Court.—Sept. 17th, 1857.

H. Norton Strong and William H. Goodnow
vs.
Achas P. Dutton and Cyrus Hinds.

And now come the defendants and move the court to set aside the verdict in this case, and for a new trial of the issue; which motion is made on the following grounds:

1st. On the ground of the improper admission of testimony by the court on behalf of the plaintiffs.

2d. On the ground of the misdirection of the court in the charge to the jury.

3d. On the ground that the damages are excessive.

4th. On the ground that the verdict is against law and evidence.

E. G. RYAN,
Att'y for Def'ts.

At a stated term of the district court of the United States of America for the district of Wisconsin, begun and held according to law, at the city of Milwaukie, on the first Monday (being the fourth day) of January, A. D. 1858. Present, the Honorable Andrew G. Miller, judge of said court, presiding; Major J. Thomas, marshal; John M. Miller, clerk.

On the twenty-first day of said term, to wit, on the eighth day of March, A. D. 1858, the following proceedings were had, to wit:

H. Norton Strong and William H. Goodnow
vs.
Achas P. Dutton and Cyrus Hines. } At Law.

This day came the parties, by their counsel, and submitted the motion of the defendants for a new trial, without argument, according to their agreement in writing, filed as follows:

Argument.

U. S. District Court, district of Wisconsin.

H. Norton Strong and Wm. H. Goodnow
vs.
Achas P. Dutton and Cyrus Hines. } Stipulation.

It is hereby stipulated that the motion for a new trial be and

the same is hereby submitted to the judge for his decision, and that his decision may be filed as of January term last; and that if the motion be overruled, the defendants have ten days from notice of the decision to prepare, settle, and sign their bill of exceptions.

JOHN W. CARY,
Pl'ffs Att'y.
E. G. RYAN,
Def'ts Att'y.

Dated 8th March, 1858.

Judgment.

On consideration whereof, it is ordered by the court that the said motion be and hereby is overruled; and it is considered and adjudged by the court now here, that the plaintiffs do have and recover of the defendants, Achas P. Dutton and Cyrus Hines, the sum of two thousand four hundred and fifty-five dollars and seventy-one cents, so assessed by the jury, together with one hundred and fifty-five dollars and seventy-eight cents, their costs about their said suit in this behalf by them expended, and that they have execution therefor.

Judgment-roll signed March 8th, A. D. 1858.

J M. MILLER,
Clerk.

Damages.....	$2,455 71
Costs.....	155 78
	$2,611 49

Judgment-roll filed March 8th, A. D. 1858, at 5 o'clock p. m.

J. M. MILLER,
Clerk.

And a deposition was read on the trial of this cause, as follows:

Deposition.

UNITED STATES OF AMERICA,
District of Michigan, City of Detroit,
Wayne County and State of Michigan, ss.

Be it remembered, that on this eighteenth day of March, in the year of our Lord one thousand eight hundred and fifty-seven, H. Norton Strong personally appeared before me, William D. Wilkins, a commissioner appointed under the laws of the United States of America to take affidavits and acknowledgments of bail in and for said district, and made oath that he, the said H. Norton Strong, was one of the plaintiffs in a suit then depending in the district court of the United States for the district of Wisconsin, wherein H. Norton Strong and William H. Goodnow are plaintiffs, and

Achas P. Dutton, Elisha Raymond, and Cyrus Hinds are defendants; that the testimony of William Caldwell is necessary and material for said plaintiffs in the prosecution of said cause, and to establish and maintain their cause of action therein; that said witness resides in Detroit, Michigan, and more than one hundred miles from Milwaukie, State of Wisconsin, where the court at which he the said H. Norton Strong, libell't aforesaid, expected the said cause to be tried, is appointed by law to be held, and that said defendants have no attorney, agent, or other person residing in Detroit, Mich'n, or within one hundred miles thereof, (to his best knowledge,) on whom to serve notification, and that it is material and necessary that the deposition of said witness should be taken de bene esse in said cause.

And the said H. Norton Strong, plaintiff aforesaid, requested me that the said witness might be examined, and that his deposition de bene esse might be taken before me, according to the act of Congress in such case made and provided. Whereupon I ordered that the said William Caldwell should be examined de bene esse before me, at my office, being the U. S. dist. clerk's office, in the city of Detroit, in the State of Michigan, on Wednesday, the eighteenth day of March, A. D. 1857, at ten o'clock a. m. of said day; and as the said H. Norton Strong and his attorney, Wm. W. Duffield, esq., appearing before me, at my office aforesaid, in Detroit aforesaid, on this eighteenth day of March, A. D. 1857, at ten o'clock a. m. of said day; and the said witness, Wm. Caldwell, appearing also before me, at the time and place aforesaid, I have therefore proceeded with the said examination.

And the said William Caldwell, being about the age of twenty-four years, and having been by me first cautioned and sworn to testify the truth, the whole truth, and nothing but the truth, in the matter of controversy aforesaid, I did carefully examine the said William Caldwell; and he did thereupon depose, testify, and say as follows, to wit:

I am a sailor; have been such for 5 years. In May, 1855, I was 2d mate on the schooner Homer Ramsdell; she was bound from Chicago, Illinois, to Racine, Wisconsin; we were light at the time. We left Chicago on Sunday morning, May 5th, 1855; the sch'r at that time was in good condition, tight, staunch, strong, and seaworthy, with enough of a crew to handle her in any weather. We had fine weather until we got off Racine; we could only make one light on the pier. The wind suddenly changed when we were about one-fourth of a mile off the harbor from south to north northeast, and blowed hard; at that time we were heading for the light—as we supposed, the light on the north pier. We got in between the two bridge piers, the gale still increasing; it was then between 10 and one o'clock at night, on the 7th; we got lines out then to the weather pier, and pulled the vessel over: we found the

light on the north bridge pier. There was no light on either of the harbor piers; we let go the working anchor to check her headway, and after her anchor brought her up we sagged over on to the south bridge pier; we didn't hurt the vessel at all. We then got lines to the north pier, to heave her over, so as to keep her from pounding on the pier or going ashore *ashore*, as the wind was increasing. We had at first purposed to get her into the harbor, but could not do it, as the sea was so heavy. We got her about half-way to the pier, and then, as we could not get her up, on account of the heavy wind and sea, we got the large hawser out on the pier, and two other lines—these we took to the windlass and heaved on them; we got her up to the pier, when she came up head to; this was about ½ past 4 o'clock a. m. While we were heaving, the wind continued to increase blowing heavily; after getting up to the pier, we got out some extra lines and another new hawser, and made them fast to the vessel and to piles on the pier, securing the hawser to the schooner's larboard quarter. We then got six additional hands to aid in keeping the vessel from going ashore; the sea was then running very high. I suppose, from getting our hawser to the quarter, our intention was to get canvass on and get out into the lake. We did not succeed, even with the extra help, in casting her properly, and getting her up to the pier, on account of the heavy sea. We then got out her large chain and additional hawsers; the vessel then commenced pounding, and all our hope of saving the vessel was from hanging on to the pier; the pier then began to start; this was then about 12 o'clock noon; the lines chafed and parted, and left us riding by our chain cable and three hawsers; then the piles on the pier, to which our chain cable was attached, started, and at 2 o'clock p. m. they gave way; and these piles got foul with other piles and with the pier—we held on then by these piles and by the hawsers. Then a man came on the pier and cut the hawsers—he cut them contrary to our request; saw him cut the hawsers with an axe; don't know who he was. The strain then came all over on the chain cable, which dragged the rest of the piles away, and the vessel went over to the south bridge pier. As we commenced drifting we let go our working anchor to check the vessel, but she still dragged. She grounded, head on, and struck the pier—at first, stern on, and then swung over, broadside on, carrying away her staunchions and bulwarks on the larboard side. To save the vessel from further damage, we then scuttled her, at about 3 o'clock p. m. After she was scuttled she lay easily, the sea breaking over her, and she did not pound so heavily. If the south pier had not been there, I think we could have got the vessel out in the lake. The south pier was in a poor dilapidated condition, especially at its eastern end; and had the vessel attempted to get out into the lake, she could not have weathered this pier, but would have struck on the piles, and perhaps

drowned all hands. In my opinion, in that condition of the wind and sea, we could not safely have put to sea; and our only chance of safety was to have held on to the north pier;—believe the north pier was Dutton and Raymond's pier. The vessel could not have rode at anchor, as there was not room enough to have given her sufficient scope of chain; and I think she would not have rode against the head sea, even if there had been room enough, and we had paid out the chain. In my opinion, had the lines not been cut the vessel would not have been damaged, but would have rode it out. The gale did not lull until some time in the afternoon of the 8th. Three of the six extra men the captain shipped I know were sailors, and think the three others were. They rendered all the service they could. I now reside in Detroit.

WILLIAM CALDWELL.

Sworn and subscribed before me, on this 18th day of March, A. D. 1857.

WM. D. WILKINS,
U. S. Com'r Cir. Ct. U. S. for the Seventh Cir'ct and Dist. of Mich'n.

UNITED STATES OF AMERICA,
District of Michigan, ss.

I, William D. Wilkins, a commissioner duly appointed by the circuit court of the United States for the seventh circuit and district of Michigan, under and by virtue of the acts of Congress, entitled "An act for the more convenient taking of affidavits and bail in civil causes pending in the courts of the United States," passed February 20th, 1812, and the act of Congress entitled "An act in addition to an act entitled an act for the more convenient taking of affidavits and bail in civil causes pending in the courts of the United States," passed March 1st, 1817, and the act entitled "An act to establish the judicial courts of the United States," passed September 24th, 1789, do hereby certify, that the reason for taking the foregoing deposition is, and the fact is, that the testimony of William Caldwell is material and necessary in the cause, the title whereof is in the caption of said deposition named, and pending in the district court of the United States for the district of Wisconsin, and that the said witness lived at a greater distance than one hundred miles from Milwaukie, in the State of Wisconsin, the place of trial of said cause.

I further certify, that no notification of the time and place of taking the said deposition signed by me was made and served on the defendants in the cause aforesaid, or any one on their behalf, to be present at the taking of the said deposition, and to put interrogatories, if he or they might think fit, because neither the said defendants nor their attorneys, agents, or other persons in their behalf resided at the place of taking said deposition, or within 100 miles thereof, on whom to serve such notice.

I further certify, that on the eighteenth day of March, in the year of our Lord one thousand eight hundred and fifty-seven, I was attended by H. Norton Strong, one of said plaintiffs, by Wm. W. Duffield, esq., his attorney, and by the witness aforesaid, who was of sound mind and of lawful age; and the witness being by me first carefully examined and cautioned, and sworn to testify the truth, the whole truth, and nothing but the truth, and his deposition being by me reduced to writing, in the presence of the witness aforesaid, and from his statements, and after carefully reading the same to the witness, he then subscribed the same in my presence.

I have retained said deposition in my possession, for the purpose of sealing up and directing the same with my own hand to the court for which the same were taken; and I certify that the same will be retained by me until I shall deposite the same with my own hand, sealed up and directed as aforesaid, in the post office at Detroit, Michigan, the place where the said deposition was taken.

And I do further that I am not of counsel nor attorney for either of the parties in the said deposition and caption named, nor in any way interested in the event of the cause named in the said caption.

In testimony whereof I have hereunto set my hand and seal, this eighteenth day of March, in the year of our Lord one thousand eight hundred and fifty-seven, and of the independence of the United States of America the eighty-first.

WM. D. WILKINS, [L. S.]
United States Commissioner,
duly appointed by the circuit court
of the United States, for the seventh
circuit and district of Michigan.

UNITED STATES OF AMERICA,
District of Michigan, ss.

I, John Winder, clerk of the circuit court of the United States for the seventh circuit and district of Michigan, do hereby certify that I am well acquainted with the handwriting of William D. Wilkins, whose name is subscribed to the annexed deposition, and that the signature to the same is in his proper handwriting. And I do further certify that he was, at the time of signing the same, a United States commissioner, duly appointed, under and by virtue of the acts of Congress in such behalf made and provided, by the circuit court of the United States of America for the seventh circuit and district of Michigan.

In testimony whereof I have hereunto subscribed my name and affixed the seal of the said circuit court, at Detroit, in said [L. S.] district of Michigan, this eighteenth day of March, in the year of our Lord one thousand eight hundred and fifty-seven. JNO. WINDER, *Clerk.*

And afterwards, to wit, on the eighteenth day of March, A. D. 1858, came the defendants, Achas P. Dutton and Cyrus Hinds, by their counsel, and filed a bill of exceptions, as follows:

Bill of Exceptions.

In the United States District Court for the district of Wisconsin.

H. Norton Strong & William H. Goodnow
against
Achas P. Dutton, Elisha Raymond, and Cyrus Hinds.

Be it remembered, that the issue in this cause came on to be tried in this court on the 15 and 16th days of September, 1857, before the judge of this court, and a jury; and thereupon the plaintiffs, to maintain the issue on their part, read in evidence the deposition of William Caldwell, on file in this cause, and hereto annexed.

And further called as a witness James C. Robinson; who being sworn, was asked by the plaintiffs counsel who were the owners of the schooner Horner Ramsdell at the time of the accident mentioned in the pleadings. To which question the defendants objected: First. Because the ownership of the vessel cannot be proved by parole, but must be shown by registry or paper title; 2d. Because the witness cannot swear to the ownership of the property; but at most only to facts and circumstances from which ownership may be inferred. Which objection was overruled by the court, and the witness allowed to state facts and circumstances showing ownership; to which ruling defendants, by their counsel, then and there excepted, and their exception was allowed by the court.

The witness answered, that he was the master of the schooner in May, 1855. Plaintiffs' counsel then asked the witness by whom he was employed as such master? To which question the defendants' counsel objected, for the same reasons as to the last question; which objection was overruled by the court, and the witness allowed to answer the question. To which ruling defendants then and there excepted, and their exception noted by the court; and the witness answered, that he was employed by H. N. Strong, one of the plaintiffs; the witness further stated, that in May, 1855, Strong resided in Detroit, and was in business in the firm of H. N. Strong & Co., and that firm was composed of Strong and Goodnow, the plaintiffs. The witness was then asked by the plaintiffs to state whether he was employed by Strong in his individual capacity, or by the firm of H. N. Strong & Co. To which question defendants objected; and the court overruled the objection, and permitted the question to be put to the witness; to which ruling the defendants excepted, and their exception was allowed by the court, and the witness

stated in answer, that he was employed by Strong for the firm. The plaintiffs further asked the witness who directed him in the use of the vessel. To which question the defendants objected; their objection was overruled by the court, and the question allowed to be put to the witness. To which ruling the defendants excepted, and their exception allowed by the court, and the witness answered, that the vessel was engaged in 1855 in carrying freight; that H. N. Strong directed him, and the vessel was then in the service of Strong & Company, the plaintiffs.

The witness then proceeded to testify how it occurred, and the damages resulting therefrom. The witness, amongst other things, testified: We left Chicago in the evening of the sixth of May, 1855; had light westerly winds till we got down off Racine, between twelve and one o'clock in the night; were about a quarter of a mile from the light of the pier, as we supposed, when the wind hauled suddenly in a squall from the northeast; headed for the light, supposing it the harbor pier light. When we got close we found the light was the bridge pier which runs out into the lake. Seeing our mistake, that it was the bridge pier, we took in our canvas and let go anchor, to prevent going on the beach. She swept down to the south bridge pier. We then run a line to the north bridge pier to heave her over; the wind and storm increasing all the time. About half way over we were obliged to run out a large hawser to heave her over. The anchor was no check on her; there was a heavy squall. With that hawser we hove her over to the north pier. After we got her over, there was a high sea on, and we had to get more help, as we could not save her ourselves. It was then about four o'clock in the morning. We got six men to help us, and bought a new line to spring her up to the pier. The bow was then thirty or forty feet from the pier. We worked to about ten o'clock. We used our line fastened to the pier, and an after chalk with the windlass. We concluded to attach to the pier, as the only salvation of the vessel; and we made her fast to the pier—the wind and sea increasing. From twelve o'clock they gradually subsided. About that time the pile to which the chain was attached started from the other side of the pier, and passed through the pier eight or ten feet; shortly after the other line gave way, and left her riding on the new line and chain. They held her till half past one o'clock or two, when the line was cut. Know Dutton, the defendant. He told me to get the vessel out of that, or he would cut her adrift; replied, would get out if possible, and if not, I would hang on to the pier. Dutton was on the pier when the line was cut, not far from the place. We went on the south pier, larboard side; struck hard. We scuttled her as soon as possible to prevent her going to pieces. The line was cut by Hinds, who was then in the employ of defendants, in their warehouse and on the pier; do not know that Dutton ordered Hinds to

cut the line, or saw it done. (It does not appear on proof that Dutton disavowed the act, or disclaimed it. The vessel was fastened to the outer end of the pier. The defendants were forwarders, and used the pier for mooring vessels thereto. The pier extends several hundred feet from shore into the waters of Lake Michigan, and is private property. When the vessel was cut loose the master and the crew, and several of the additional men, were on board. There was no consent asked of the defendant to hitch on to the pier.)

The witness further testified, that the vessel was repaired and repainted in consequence of the injuries received, and produced certain bills of the repairs. Upon his cross-examination by the defendants' counsel the witness stated, that at the time of the accident and injuries the vessel was insured in a Buffalo insurance office, but he could not state whether the plaintiffs had received anything from the insurance company or not.

Thereupon the plaintiffs, after having given other evidence to sustain the issue on their part, rested their case. And thereupon the defendants' counsel moved the court to discharge the defendant Raymond; which motion was granted by the court, and verdict of not guilty was rendered as to the defendant Raymond, the plaintiffs' counsel not objecting. And the defendants' counsel also moved the court to discharge the defendant Dutton; which motion was overruled by the court. To which ruling the remaining defendants then and there excepted, and their exception was allowed by the court.

And thereupon the defendants, having given evidence to sustain the issue on their part, also resting their case. And thereupon the defendants prayed the court to instruct the jury, as follows:

Defendants' 1st prayer. That the defendants, having given evidence that the vessel was insured, it lay upon the plaintiffs, either to disprove that fact or to prove that the plaintiffs had not received any compensation for the injuries complained of from the insurers; and that if the jury believed from the evidence that the vessel was insured at the time against such perils as those proved, if they find for the plaintiffs, they should assess only nominal damages for those injuries.

Which instruction, so prayed by the defendants, the court refused to give to the jury. To which ruling of the court the defendants then and there excepted, and their exception allowed by the court.

Defendants' 2d prayer. That if the jury believed from the evidence that it was material for the preservation of the pier to cut the vessel loose from it, the persons in charge of the pier had a right to do so as against all rights of property in the vessel, after

reasonable notice given and request made, and refused, for the vessel to leave.

To which 2d prayer of the defendants the court answered, and charged the jury as follows:

That if the vessel was attached to the pier towards its outward end, and was in peril, the owner of the pier could not put the vessel in greater peril, by cutting her loose, for the safety or protection of the pier. The pier was run out into the lake for the accommodation of commerce, and was used as private property in public business. The vessel was liable for such damage as she was doing the pier. The owners of the pier were not justifiable or excusable for cutting the vessel loose, if it was material for the safety or protection of the pier, or of that part to which the vessel was attached. To which answer to defendants' 2d prayer the defendants then and there excepted, and their exception was allowed by the court.

Defendants' 3d prayer. That if the jury believed from the evidence that the vessel could have safely escaped from her peril by going to sea, and refused to do so, she had no right to hold on to the pier, after request made by those in charge of it to leave.

To which 3d prayer of the defendants the court answered, and charged the jury as follows:

If the vessel could have been safely put to sea, it would have been unnecessary and improper for her to remain there, doing damage or injury to the pier, and the pier owners could lawfully loose her from her mooring. But in ascertaining the fact, it is the duty of the jury to take into consideration the violence and extent of the storm, and whether the master of the vessel acted in good faith.

It is not expected that a man should be infallible, or that he should do in an emergency precisely what others might think would be best. If he was a competent master, and the emergency required a decision whether to go out or not, and he appears to have made the decision with due deliberation, by a free exercise of his skill and discretion, with no unreasonable timidity, and with an honest intent to do his duty, he was in no wrong by holding on to the pier, after request made to leave it. He was not bound to put the vessel and those on board in greater peril, by obeying the request of the owners of the pier, if, in his judgment, he would be doing so by putting out, provided he could do so. The procuring additional hawsers and additional men aboard are circumstances from which it may be infered he was acting in good faith. To which answer of the court to the defendants' 3d prayer the defendants then and there excepted, and their exception was allowed by the court. And the court proceeded further to instruct the jury as follows:

If the vessel was in the service of the plaintiffs in the prosecution of their business, as stated by the master, they can maintain this suit for damages.

The vessel is personal property, and its possession and use may be proved by parole. If the plaintiffs had a deed or bill of sale, it would have been proper to produce it; but they may not have such a paper.

The enrollment and license were not necessary to be produced in evidence as a muniment of title.

For the purposes of this suit, parol evidence of possession and use of the vessel is proper and legal evidence.

To which instruction of the court the defendants then and there excepted, and their exception was allowed by the court.

And the court proceeded further to instruct the jury, as follows: If the vessel was insured, as stated by Captain Robinson, it would not effect the plaintiffs' right to recover. The insurance of the vessel is a matter between the insurer and the owner of the insured property. If the damage was not occasioned by a peril insured against, the insurance company would have no connection with this suit, directly or indirectly. If, on the other hand, the damage was occasioned by a peril insured against, this suit would be in relief of the insurance company. And if the amount be paid, the judgment of this suit would be for the use of the company.

To which instruction of the court the defendants then and there excepted, and their exception was allowed by the court.

And the court proceeded further to instruct the jury, as follows: If Hinds, the hired man or clerk of Dutton at the pier, in the business of the pier, cut the vessel loose, after Dutton gave notice aloud to the master to take the vessel off or he would cut her loose, and Dutton, when the act was committed, was present, and did not disavow or condemn the act, it is proper for the jury to determine that the act was committed with his procurement or consent.

To which instruction of the court the defendants then and there excepted, and the exception was allowed by the court.

And the court proceeded further to charge the jury, as follows: As to the earnings of the vessel, they are claimed for seventeen days; but some portion of that time she was necessarily undergoing repairs of injuries to her before she was cut loose—for such time the plaintiffs cannot recover. The plaintiffs claim is for the net earnings the vessel might make during the time she was undergoing repairs for the injury complained of against the defendants.

To which instruction of the court the defendants then and there excepted, and their exception was allowed by the court.

And inasmuch as the said several exceptions of the defendants, and the evidence and instructions aforesaid, do not appear by the record, the court has allowed this bill of exceptions, setting forth

so much of the proceedings, evidence, and instruction as is material to the said exceptions.

And the judge of the said court has accordingly hereto set his hand and seal.

A. G. MILLER, [SEAL.]

And a bond was filed, as follows:

District Court of the United States for the district of Wisconsin.

Know all men by these presents that we, Achas P. Dutton, Silas H. Hinds, who is sued as Cyrus Hinds, and Elisha Raymond, all of the city of Racine, in the State of Wisconsin, are held and firmly bound unto H. Norton Strong and William H. Goodnow in the sum of five thousand dollars, to be paid to the said H. Norton Strong and William H. Goodnow, their executors and administrators; to which payment, well and truly to be made, we bind ourselves, our heirs, executors and administrators, jointly and severally, firmly by these presents.

Sealed with our seals, and dated this eighteenth day of March, eighteen hundred and fifty-eight.

The condition of this obligation is such, that whereas the said H. Norton Strong and William H. Goodnow have recovered a judgment in the district court of the United States for the district of Wisconsin, against the said Achas P. Dutton and Cyrus Hinds, for the sum of twenty-six hundred and eleven dollars and forty-nine cents, which said judgment was rendered on the eighth day of March, in the year of our Lord eighteen hundred and fifty-eight, and whereas the said Achas P. Dutton and Cyrus Hinds, in order to obtain a reversal of the same, have sued out a writ of error to the Supreme Court of the United States:

Now therefore, if the said Achas P. Dutton and Cyrus Hinds shall prosecute their said writ of error to effect, and shall answer all damages and costs if *he* shall fail to make good *his* plea, then this obligation shall be void; otherwise the same shall remain in full force and effect.

SILAS H. HINDS, [SEAL.]
ACHAS P. DUTTON, [SEAL.]
ELISHA RAYMOND, [SEAL.]

Signed, sealed, and delivered in the presence of—

UNITED STATES OF AMERICA,
District of Wisconsin, ss.

Elisha Raymond, who has executed the above bond, being duly sworn, deposes and says, that he resides at the city of Racine, in the said district; that he is a householder and freeholder in said district, and is worth ten thousand dollars, over and above all liabilities and exceptions.

ELISHA RAYMOND.

Subscribed and sworn to, this eighteenth day of March, 1858, before me.

WINFIELD SMITH,
U. S. Commissioner.

March 18, 1858. Bond and surety approved.

A. G. MILLER, *Judge.*

UNITED STATES OF AMERICA,
District of Wisconsin, ss.

I, John M. Miller, clerk of the district court of the United States of America for the district of Wisconsin, do hereby certify that I have compared the writings annexed to this certificate, and they are true copies of their respective originals, now on file and remaining of record in my office.

In testimony whereof I have hereunto set my hand and duly affixed the seal of the said court, at the city of Milwaukie, in the said district of Wisconsin, this eighteenth day of [SEAL.] December, in the year of our Lord one thousand eight hundred and fifty-eight, and of the independence of the said United States the eighty-third.

J. M. MILLER, *Clerk.*

Writ of Error.

UNITED STATES OF AMERICA, *ss.*

The President of the United States of America to the Judge of the District Court of the United States of America for the district of Wisconsin, greeting:

Because in the record and proceedings, as also in the rendition of a judgment in a plea which is in the said district court of the United States of America for the district of Wisconsin, before you, between H. Norton Strong and William H. Goodnow, plaintiffs, and Achas P. Dutton and Cyrus Hines, defendants, a manifest error hath happened, to the great damage of the said Achas P. Dutton and Cyrus Hines, as by the complaint appears, and it being fit that the error, if any there hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, you are hereby commanded, if judgment be therein given, that then under your seal distinctly and openly you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington, on the first Monday of December next, in the Supreme Court to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to law and custom of the United States should be done.

Witness the Honorable Roger B. Taney, Chief Justice of the said Supreme Court of the United States, this eighteenth day of March, in the year of our Lord one thousand eight hundred and fifty-eight, and of the independence of the United States the eighty-second.

J. M. MILLER, *Clerk.*

Filed March 18, 1858.

Citation.

United States of America, to H. Norton Strong and William H. Goodnow, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington, on the first Monday of December next, pursuant to a writ of error filed in the clerk's office of the district court of the United States for the district of Wisconsin, wherein Achas P. Dutton Cyrus Hines are plaintiffs in error and you are defendants in error, to show cause, if any there be, why the judgment in the said writ of error mentioned should not be corrected, and speedy justice should not be done to the parties in that behalf.

Witness the Honorable Roger B. Taney, Chief Justice of the said Supreme Court of the United States, this eighteenth day of March, in the year of our Lord one thousand eight hundred and fifty-eight, and of our independence the eighty-second.

A. G. MILLER,
Judge for the District of Wisconsin.

Served on the within named H. Norton Strong and William H. Goodnow, by showing this citation to John W. Cary, their attorney, personally, and delivering him a copy thereof, this 22d day of March, 1858.

JNO. J. THOMAS, *Marshal.*
By J. A. CARSEVELL, *Deputy.*

Marshal's fees:

Service	2 00
Travel	1 50
Copy	20
Affidavit	25
	$3 95

Filed March 23, 1858.

UNITED STATES OF AMERICA,
District of Wisconsin.

John A. Carsevell, being by me duly sworn, deposes and says that the facts set forth in the above return are true.

J. A. CARSEVELL.

Subscribed and sworn to before me, this 22d day of March, 1858.

W. E. WORDING,
U. S. Commissioner.

Filed 24 Dec'r, 1858.

SUPREME COURT OF THE UNITED STATES.

No. 36.—December Term, 1860.

ACHAS P. DUTTON AND CYRUS HINES, PLAINTIFFS IN ERROR,

vs.

H. NORTON STRONG AND WILLIAM H. GOODNOW.

Brief of Plaintiffs in Error.

I.

The court below erred in the admission of certain portions of the testimony of James C. Robinson. (See pages 23 and 24.)

II.

The court erred in overruling the motion for a new trial.

III.

The court erred in refusing the 1st, 2d, and 3d prayer for instructions to the jury.

IV.

The court erred in misdirecting the jury.

G. S. Gideon, Printer, 511 Ninth street, Washington.

V.

The court erred in the instructions given in answer to the second prayer. (See page 26.)

VI.

The court erred in the instructions given in answer to the 3d prayer.

VII.

The court erred as to the rule of damages.

J. R. DOOLITTLE,
Of Counsel for Plaintiffs.

Supreme Court of the United States.

ACHAS P. DUTTON, AND
CYRUS HINES,
Plaintiffs in Error,

v.

H. NORTON STRONG, AND
WILLIAM H. GOODNOW,
Defendants in Error.

BRIEF AND POINTS FOR DEF'TS IN ERROR.

GEORGE B. HIBBARD, *for Defendants in Error,*
Buffalo, N. Y.

BUFFALO:
JOSEPH WARREN & CO., PRINTERS, 178 WASHINGTON STREET
1861.

Supreme Court of the United States.

ACHAS P. DUTTON and
CYRUS HINES,
Plaintiffs in Error,
v.
H. NORTON STRONG and
WILLIAM H. GOODNOW,
Defendants in Error.

Brief on the part of the Defendants in Error.

GEORGE B. HIBBARD *for Def'ts in Error.*

This was an action brought by the defendants in error against the plaintiffs in error. The declaration contains four counts.—No question arises on the pleadings, and the substance of the declaration, therefore, may be stated to be, that the defendants in error were the owners of the Schooner Homer Ramsdell, her tackle, &c., at the time of the injury complained of, and which then was lawfully employed in navigating the waters of Lake Michigan, that by stress of weather the vessel was compelled to make fast to a dock, or common mooring place, in Lake Michigan; that the plaintiffs in error on the 7th of May, 1855, wrongfully, &c., cut the lines and fastenings holding the vessel to the dock; that in consequence thereof the vessel was driven against another dock, &c., and injured; and that in consequence of such injury the defendants in error, (besides other damages by them sustained,) lost the use of the vessel, and the profits and advantages they otherwise might have had. The fourth count of the declaration states, in substance, that the plaintiffs in error, wrongfully, &c., erected, &c., an obstruction to the navigation of Lake Michigan, whereby the schooner was unable to make the harbor of Racine, &c., and that thereby the vessel was injured, &c., with an allegation as to damages similar to that contained in the other counts. The plea was the general issue.

The cause came on for trial on the 15th of September, 1857, at a District Court of the United States, held for the District of Wisconsin, by and before the Hon. Andrew G. Miller, District Judge, &c., &c. The Jury found a verdict for the defendants in error against the plaintiffs in error for $2455.71. A motion for a new trial was made and overruled at the January Term, 1858, of the District Court of Wisconsin. Judgment was signed on the 8th day of March, 1858, in favor of the defendants in error, against the plaintiffs in error, for the amount of the verdict, besides costs.

The cause came to this Court upon writ of error to the District Court of the United States for the District of Wisconsin.

The questions in the case arise upon exceptions taken on the trial; and can more appropriately be stated under the Points made by the defendants in error. The Points, (however trivial some of the exceptions may be,) will, for convenience, be stated in the order in which they are set forth in the Bill of Exceptions sealed in the case.

POINT I.

There was no error in overruling the objections taken to the parol proof as to the ownership of the vessel.

a. Ownership of a vessel may be shown, like the title to any personal property, by ordinary evidence tending to show such ownership. There is no necessity for the production of a written bill of sale, or other muniment of title.

3 *Kent's Com.* 130, *Notes.*
Abbott on Shipping, 2 *Notes.*
Parson's on Maritime L, 47, 55, *Notes.*
Bixley v. Whitney, 8 *Pick.* 86.
Stacy v. Graham, 3 *Duer*, 444, 452.

b. This was an action against a wrong doer. Possession under the circumstances of this case, was sufficient in any view, to enable this action to be maintained by the defendants in error.

2 *Hilliard on Torts*, 2.
Hoyt v. Gelston, 13 *John R.* 561.
Bas v Steele, 3 *Wash. C. C. R.* 381, 390.

c. There was no impropriety in the Courts permitting the various things sworn to by the witness Robinson, relating to the acts of the defendants in error in respect to the property, and relating also to the acts of the witness in control of the property. The evidence was proper.

First—As showing that Robinson was acting as master of the vessel, and was the servant of the defendants in error; and

Second—As showing, from his acts, that the defendants in error were in actual possession of the vessel.

POINT II.

There was no error in the Court's refusing to "discharge" Dutton.

a. The motion was equivalent to a motion for a nonsuit, which is not permitted by the practice of the Courts of the United States.

Elmore v Grymes, 1 *Peters*, 469.
Crane v Morris' lessee, 6 *Peters*, 598.

b. There was sufficient evidence in the case to permit the question to go to the Jury whether or not Dutton, co-operated in the act complained of.

POINT III.

There was no error in the Court's refusing to charge the jury that if they believed the vessel was insured against the perils from which she suffered injury, at the time, they should, if they found for the plaintiff, only assess nominal damages.

a. If the plaintiffs in error claimed anything from this point they should have proved that the defendants in error had been paid the amount of the iusurance.

b. If the vessel was insured, or if the amount of the insurance had been paid to the defendants in error, the insurers then would have been subrogated to the original rights of the assured, and the suit should have been prosecuted in the name of the assured.

POINT IV.

There was no error in the charge made by the Court under the second prayer of the plaintiffs in error.

I.—The pier was an unauthorized obstruction—a nuisance in the Lake. After the vessel had been moored to the pier under the circumstances the plaintiff in error had no right to cast her off.

a. The commercial and legal character of the Western Lakes is so fixed that those waters must be considered commercially and legally, seas.

Ordinance 1787, 1 *Stat. at L.* 52, *N.*
Fitzhugh vs. Genesee Chief, 12 *How.* 443.
Moore vs. The Am. Trans. Co., 24 *How.* 1.

b. The evidence was sufficient to permit the jury to find, as a matter of fact, that the pier was a nuisance.

c. As a matter of law the pier was a nuisance.

3 *Kent's Com.* 427.
Lord Hale, De Portibus Maris (Harg. Ed.) 85.
Lord Hale, De Jure Maris (Harg. Ed.) 8, 9.
Rex v. Lord Grosvenor, 2 *Starkie* 511.
Blundell v. Cutterall, 5 *Barn. & Ald* 268, (7 *Eng. C. L.* 88, 108.)
Rex v. Ward, 4 *Adol. & El.* 384, (31 *E. C. L.* 92.)
Reg. v. Randall, 1 *Car. & Marsh*, 496, (41 *E. C. L.* 272.)
Simpson v. Scales, 2 *Bos. & Pul.* 496.
The Mayor, &c. v. Brooke, 7 *Adol. & E.* 339, (53 *E. C. L.* 339.)
Hart v. The Mayor of Albany, 9 *Wend.* 571.
The People v. Platt, 17 *John.* 195, 209.

The U. S. v. The New Bedford Bridge Co., 1 *Wood & Minot* 401, 411.
Rex. v. Caldwell, 1 *Dallas* 150.
Martin v. Waddell's lessee, 16 *Peters* 367, 421.

d. This must be especially so when there is no proof that the plaintiff in error owned the soil along the shore. The presumption, beside, is that he has no right thus to occupy, but is a mere wrong doer.

See authorities last cited, especially

Blundell v. Cutterall, 5 *Barn. & Ald.* 268.
Hart v. The Mayor, &c., 9 *Wend.* 571.
The U. S. v. The New Bedford Bridge Co., 1 *Wood & Minot* 401, 411.

e. Of course, (irrespective of the right of any one to abate a nuisance,) it cannot be claimed that the plaintiffs in error had any right in the nuisance, which would permit him to cast off the vessel, thus exposing it to peril, under any circumstances. Most certainly not when the vessel was forced there by stress of weather, as the Jury had a right to find she was.

The Schooner Mary, 1 *Gallison*, 206.
Peisch v. Ware, 4 *Cranch*, 347.
The Frances and Eliza, 8 *Wheat.* 398.
The Gertrude, 3 *Story*, 68.

II. The plaintiff in error by building his pier in the lake invited, and, at least impliedly, licensed vessels, in any pursuit of their business, to approach and moor to the pier.

a. This is so, as matter of law.

Balt v. Stennett, 8 *T. R.*, 606.
Bradslee v. French, 7 *Conn.* 125.
Heany v. Heeny, 2 *Denio*, 625.

b. This license, of necessity, included the right to use the dock according to the exigencies of the case. Necessarily therefore when those exigencies required that the vessel should hold to the pier after once mooring there, the plaintiffs in error had no right to revoke the license, and cast off the vessel, thus causing her injury.

See authorities last cited.

POINT V.

There was no error in the charge made under the third prayer of the plaintiff in error.

See authorities, &c., under Point IV.

POINT VI.

All those portions of the charge of the Judge relating to the possession of the vessel, the proof of title, the insurance of the vessel, and the acts of the plaintiffs in error, were correct.

See authorities, &c., under Points I, II, III.

POINT VII.

The defendants in error had a right to recover for the damages sustained by them, in consequence of the loss of the use of the vessel, while she was being repaired.

Williamson v. Barrett, 13 *How.* 101.
The Narragansett, 1 *Blatchford*, 211.
Vantine v. The Lake, 2 *Wallace, jr.*, 55.
The Rhode Island, *Olcott*, 502.

POINT VIII.

Not one of the exceptions above referred to was well taken. Some parts of each portion of the charge excepted to, were correct. An exception is only well taken when it relates to a specific and wholly erroneous ruling.

Hart v. The R. & S. R. R. Co., 4 *Selden*, 37.
Violett v. Patton, 5 *Cranch*, 142.
Moore v. The Bank of the Metropolis, 13 *Peters*, 302.
Camden v. Doremus, 3 *How.* 515.
Brooks v. Marbury, 11 *Wheat.* 78.

GEO. B. HIBBARD,
For Defendants in Error.